

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7970 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTILAL AMBALAL PATEL

Versus

STATE OF GUJARAT AND OTHERS.

Appearance:

MR HJ NANAVATI for Petitioner
MS SD TALATI AGP for Respondent No. 1 & 2
MR SHUKLA for Respondent No.3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/98

ORAL JUDGEMENT

The petitioner before this court is a Former employee of the respondent No.3 a non-government aided College Affiliated to Gujarat University. The facts undisputed are that the petitioner was appointed as a Demonstrator on 23rd July, 1962 and was promoted as a Lecturer on 1st October, 1970. Since 1st October, 1970 he discharged duties as a Lecturer. However, it appears that for the period from 22nd November, 1983 to 1st May,

1986 the petitioner was absent from service. On 1st May, 1986, he tendered his resignation to the College Management and also applied for regularization of the period of his absence from service from 21.11.1983 to 1.05.1986 as Leave Without Pay. The resignation tendered by the petitioner was accepted by the College Management on 31st July, 1986 and was made effective from 8th July, 1986.

2. On 15th October, 1984 the Government of Gujarat the respondent No.1 herein resolved to make the pension, gratuity and other retirement benefits available to the members of teaching staff of the University and Full time teaching staff of affiliated and aided Non-Government Arts, Science, Commerce and Education Colleges in the State of Gujarat with effect from 1st April, 1982 (hereinafter referred to as the Pension Scheme). The Pension Scheme was also made applicable to all members of existing staff recruited before 1st April, 1982 and who retired/resigned after 1st April, 1982 and prior to the date of the resolution i.e. 15th October, 1984. Paragraph 3 of the Pension Scheme provided that the members of the existing staff recruited before 1st April, 1982 and the staff who had retired on or after 1st April, 1982 and prior to the date of Pension Scheme should exercise their option within a period of one year from the date of the Pension Scheme either to continue in Contributory Provident Fund Scheme or to come under the Pension Scheme. It further provided that the option once exercised would be final. Thus, it is evident that option to come under the Pension Scheme was required to be submitted on or before 14th October, 1985. It appears that the Pension Scheme was subsequently liberalised. The Government therefore issued a resolution on 11th October, 1988 and gave one more opportunity to the teaching staff of the Affiliated Colleges to give their option to come under the Pension Scheme within three months from the date of the said resolution. The said opportunity was however not offered to the teachers who may have been in service on 15th October, 1984 but may have retired prior to 11th October, 1988. The Government, therefore, issued a further resolution on 27th February, 1991 and offered a further opportunity to the teachers of the Affiliated Colleges who had retired from service during the period from 1st January, 1986 to 11th October, 1988. It is undisputed that the petitioner herein did not opt for Pension Scheme within one year from the date of the Pension Scheme i.e. from 15th October, 1984. He first time opted for the Pension Scheme on 17th June, 1986 i.e. well beyond completion of one year from the date of the Pension Scheme. Even after

the resolution dated 11th October, 1988, the petitioner did not opt for Pension Scheme within three months from that date. He submitted his option on 24th July, 1991 i.e. well beyond the expiry of three months from the date of the resolution i.e. 11th October, 1988. The option exercised by the petitioner was not entertained by the government because they were submitted after the due date.

3. Mr. H.J.Nanavati, the learned advocate appearing for the petitioner has submitted that the Government Resolution dated 27th February, 1991 did not prescribe any time limit for submitting their option by those teachers who had retired from the service between 1st January, 1986 to 11th October, 1988. Indisputably, the petitioner resigned from service in the month of July, 1986. The petitioner was, therefore, covered by the said resolution dated 27th February, 1991. The petitioner, therefore, could have submitted his option to come under the Pension Scheme at any time after 27th February, 1991 and he had submitted such option on 24th July, 1991. The option exercised by the petitioner on 24th July, 1991, therefore, cannot be said to have been submitted after the due date and could not have been rejected on that ground alone. Mr. H.J.Nanavati has therefore submitted that the respondents Nos.1 & 2 are duty bound to process the option given by the petitioner and consider the petitioner to be entitled to pension under the Pension Scheme. It may not be out of place to mention here that infact the petitioner enjoyed the benefit of Contributory Provident Fund Scheme and the Contributory Provident Fund amount has been paid to the petitioner in the month of October, 1989 after he resigned from the service.

4. The question that arises is whether the petitioner is entitled to pension or not. In my view, though none of the respondents has raised such a contention, the petitioner is not entitled to pension at all since he has resigned from the service. Under the Pension Scheme, the rules regarding payment of pension to the government servant have been made applicable to the teaching staff of the affiliated colleges. The relevant rules are found in Chapter XI of the Bombay Civil Services Rules, Volume I; Revised Pension Rules, 1950 and Appendix XIV-C of Bombay Civil Service Rules, Volume II. On perusal of the aforesaid provisions, it is evident that the pension can be granted to a government servant who retires from service on superannuation; or who is removed or required to retire from government service on the ground of inefficiency. The government servant who

is retired from service on medical ground is entitled to invalid retirement and government servant who is removed or required to be retired from the government service for misconduct or insolvency is not entitled to any pension other than compassionate pension. Any government servant who does not fall in either of these categories is not entitled to pension. Hence, in my view, the government servant who resigns from service is not entitled to pension. Similarly, teaching member of the staff of an affiliated college also would not be entitled to pension if he resigns from service. In the present case, it is an admitted fact that the petitioner tendered his resignation on 1st May, 1986 and the same became effective from 8th July, 1986. The petitioner having resigned from service is not entitled to receive pension as claimed by him. The petitioner's claim for pension therefore cannot be accepted.

5. Mr. Nanavati has relied upon paragraph 3 (iv) of the Pension Scheme. He has submitted that even the members of the staff who resigned from service after 1st April, 1982 are given an opportunity to opt for Pension Scheme. I have perused the said paragraph 3(iv). The said paragraph provides that "where the members of the staff eligible for the scheme have retired/resigned after 1st April, 1982 to the date of issue of this Government Resolution desires to opt pension scheme as admissible the amount received on account of University's/ Management's contribution, government's share and interest earned there-on by the member shall be adjusted against the arrears of pension" It is evident that this provision is incorporated specifically for those who retired from service after 1st April, 1982 but before the date of the Pension Scheme. Even the members who had resigned during this period have been permitted to opt for Pension Scheme obviously with a view to ascertaining that they were not deprived of Pension Scheme merely because there was no Pension Scheme in operation at the relevant time. Ought we know had the pension scheme been in existence at the relevant time probably some members of the staff would have taken voluntary retirement instead of tendering resignation. This paragraph does not in any manner overrule the provisions made in respect of payment of pension. If the statutory provisions require that only a class of employees (i.e. those who have retired from service on reaching the age of superannuation or who have been removed/retired from service for want of efficiency or those who have been removed/retired on medical ground) are entitled to pension no other class of employees can be given pension under the Pension Scheme. The

petitioner who resigned from service after the date of Pension Scheme cannot take advantage of paragraph 3(iv) of the Pension Scheme.

6. In view of the above discussion, I do not find any merit in the claim made by the petitioner. Petition is, therefore, dismissed. Rule is discharged. The petitioner shall pay the cost of this petition to the respondent No.2. The cost is quantified at Rs.1500/-. Rest of the respondents shall bear their own costs.

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